

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES

CRIMINAL ACTION

v.

**DAIQUAN DAVIS, also known as
“QUAN,” and
“Q”**

NO. 15-327

DuBois, J.

June 21, 2016

MEMORANDUM

Defendant Daiquan Davis is charged in an indictment with two counts of sex trafficking of minors in violation of 18 U.S.C. §§ 1591 and 1594(a). Presently before the Court are Defendant’s Motion to Suppress Evidence and Defendant’s Omnibus Discovery Motion. Based on the following findings of fact and conclusions of law, the Motion to Suppress is denied. The Omnibus Discovery Motion denied in part, and denied as moot in part.

I. BACKGROUND

The following factual summary is based on evidence presented at the suppression hearing held on June 8, 2016.

On Friday, November 7, 2014, Bensalem Police Corporal Adam Schwartz, now Sergeant Schwartz, checked the escort section of the website www.backpage.com for advertisements typical of prostitution activity. Schwartz identified one such advertisement that listed the name “Sinceer” and the telephone number 267-650-0897 (the “Backpage ad”). An officer in training with Schwartz, Officer Daniel Crozier, called that number. Crozier negotiated sex in exchange for money with the person who answered, and was instructed to go to the Comfort Inn in Trevose, Pennsylvania.

Schwartz and Crozier drove to the Comfort Inn and spoke with the front desk clerk. The clerk stated that the telephone number in the advertisement matched the number on file for an individual named Daiquan Davis, who had reserved Room 325. The clerk also told the officers that he suspected there was prostitution occurring on the third floor. Specifically, the clerk explained that there was a black male on the third floor who periodically left his room and walked around the hotel for between fifteen minutes to an hour before returning to his room. After speaking to the clerk, Crozier again called the telephone number listed on the Backpage ad. The person who answered instructed him to go to Room 325.

Schwartz took the elevator to the third floor. As he walked by Room 325, he detected a strong odor of marijuana. He continued past the room to investigate the back stairwell. There he encountered a black male later identified as Daiquan Davis. At the suppression hearing, Schwartz and Davis testified to different accounts of what transpired in the stairwell.

Schwartz testified as follows: Davis was seated on the third-floor landing counting money, with a cell phone in plain view on the floor next to him. Tr. at 13:17–21, 14:19–22. Schwartz identified himself as a police officer and asked Davis who he was and what he was doing. Davis gave Schwartz his real name, and stated that he was staying in Room 325. Tr. at 16:11–13. While Davis was doing so, Schwartz observed that he became “nervous,” his breathing rate increased, and he appeared ready to fight or attempt to flee. Tr. at 13:21–14:1. Schwartz then placed Davis in handcuffs and conducted a pat-down search. Tr. at 14:2–15. While performing the pat-down search, Schwartz picked up the cell phone, which was still on the floor, and placed the cell phone and money into Davis’s pocket. Tr. at 16:20–23. Schwartz then used his own cell phone to dial the number listed on the Backpage ad. Tr. at 17:10. Davis’s cell

phone began to ring. Tr. at 17:11. Schwartz next performed a more thorough search of Davis's person and seized the cell phone, a Walmart gift card, and a hotel room key. Tr. at 18:1–4.

Davis contradicted Schwartz's testimony at the suppression hearing. Davis testified that he was walking up the stairs, counting his money, when he encountered Schwartz on the landing mid-way between the second and third floors. Davis said, "[I]f I'm in your way excuse me." Tr. at 70:23–25. Schwartz did not move. Davis repeated himself. At that point, Schwartz twisted Davis's arm, shoved him against the wall, and seized the money. Tr. at 71:1–5. Schwartz then placed Davis in handcuffs and removed the cell phone from his pocket. Tr. at 71:5–7. According to Davis, Schwartz immediately began to search through information on the phone. Tr. at 71:22–23. According to Davis, Schwartz never asked him where he was staying, and never called the cell phone while they were in the stairwell.

Meanwhile, Officer Crozier had begun to investigate Room 325. Crozier knocked on the door and encountered a female who identified herself as "Sincer." She invited Crozier into the room. As he entered the room Crozier identified himself as a police officer. Crozier then called Schwartz, who by that time had Davis in custody. Schwartz escorted Davis to Room 325. In the room, Schwartz and Crozier discovered used condoms, condom boxes, and marijuana. The female provided the officers with a false name, but Officer Crozier learned her real name from a pill bottle found in her purse. She then confirmed her real name and that she was seventeen years old.

Davis and the minor were transported to the police station. Davis was released at approximately 2:00 AM on Saturday, November 8, 2014, without any charges filed against him. The police retained custody of his cell phone. Davis testified that he requested the return of his

cell phone that evening and the next morning. Tr. at 72:14, 73:2. Schwartz testified that he was not aware of any such request. Tr. at 83:6.

Schwartz testified that the police did not search the contents of the cell phone until they obtained a warrant on the evening of Monday, November 10, 2014. At that time the police discovered on the phone photographs of women, including the minor discovered by Officer Crozier in Room 325, and email activity disclosing postings to www.backpage.com. Davis was arrested in late December 2014. On July 16, 2015, a federal grand jury indicted Davis on two Counts of violating 18 U.S.C. §§ 1591 and 1594(a).

Following a hearing on the pending motions, the Court received a letter from defendant. The letter advanced additional arguments based on several attached documents: two pages entitled Incident Report Form, a Property Receipt, and a Detainee Property Form. The Court does not consider that letter in ruling on the pending motions.¹ The Court provided copies of the letter to counsel and gave them the opportunity to file a supplemental memorandum to address any issues raised by the letter. Counsel for defendant filed a supplemental memorandum on June 17, 2016. The Government responded to the supplemental memorandum on June 20, 2016. The Court will consider both memoranda in ruling on the Motion to Suppress.

II. MOTION TO SUPPRESS

Davis advances three arguments in support of his Motion to Suppress: (1) defendant was seized without probable cause, and the seizure of his cell phone, gift card, and room key exceeded the scope of an investigatory stop; (2) law enforcement unreasonably delayed in

¹ See *United States v. Phillips*, No. 93-cr-513, 1994 WL 66728, at *1 (E.D. Pa. Mar. 1, 1994) (“Issues that counseled parties attempt to raise pro se generally need not be considered by the Court.”); *Hall v. Dorsey*, 534 F. Supp. 507, 508 (E.D. Pa. 1982) (“There is no right to ‘hybrid’ representation – simultaneously pro se and by counsel.”); see also *United States v. Turner*, 677 F.3d 570, 578 (3d Cir. 2012).

obtaining a warrant to search defendant's cell phone; and (3) the affidavit of probable cause in support of the cell phone warrant was excessively redacted. For the following reasons, the Court denies the Motion.

A. LEGAL STANDARD

“On a motion to suppress, the government bears the burden of showing that each individual act constituting a search or seizure under the Fourth Amendment was reasonable.” *United States v. Ritter*, 416 F.3d 256, 261 (3d Cir. 2005) (citing *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995)). The applicable burden is proof by a preponderance of the evidence. *United States v. Matlock*, 415 U.S. 164, 178 n.14 (1974).

B. SEIZURE OF THE CELL PHONE, GIFT CARD, AND ROOM KEY

The Court concludes that Schwartz had probable cause to arrest Davis in the stairwell before conducting a search. Schwartz therefore seized defendant's cell phone, gift card, and room key pursuant to a valid search incident to arrest.

(1) Probable Cause. Defendant contends that probable cause was lacking because “Corporal Schwartz had simply encountered a male in the stairwell who had money in his hand and looked nervous.” Def.’s Br. at 5. The Court rejects this argument because it credits Schwartz’s testimony and finds that, at the time of the arrest in the stairwell, he possessed sufficient information to reasonably believe that Davis was engaged in criminal activity. Thus the arrest and search incident to arrest at that time were proper.

“[A] warrantless arrest by a law officer is reasonable under the Fourth Amendment where there is probable cause to believe that a criminal offense has been or is being committed.” *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004). “Whether probable cause exists depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer at the time of

the arrest.” *Id.* “[P]robable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.” *United States v. Miknevich*, 638 F.3d 178, 185 (3d Cir. 2011) (quoting *Illinois v. Gates*, 462 U.S. 213, 245 n.13 (1983)).

At the hearing on June 8, 2016, Schwartz testified that he “asked [Davis] his name. He provided me his true name, and I asked him where he was staying and he told me Room 325.” Tr. at 16:11–13. Davis claims that he did not disclose that information. *See* Tr. at 71:8–12, 75:7–10. He argues that Schwartz’s credibility is undermined by, for example, his testimony that he placed the cell phone into Davis’s pocket. Notwithstanding minor inconsistencies, upon careful consideration of all the evidence presented at the hearing, the Court concludes that Schwartz’s credibility is not undermined with respect to any significant issue. Conversely, defendant’s credibility is undermined by his motive to avoid conviction for the serious crimes charged.

Schwartz’s testimony establishes probable cause at the time he arrested Davis in the stairwell. First, Schwartz knew that Davis was staying in Room 325—the same room that Crozier was instructed to visit after calling the number listed on the Backpage ad. Second, Schwartz knew Davis’s name from the information provided by the hotel clerk. And third, Schwartz testified as to Davis’s nervous demeanor, Tr. at 13:18–14:1, which courts routinely conclude is a factor that supports probable cause. *See, e.g., United States v. Frost*, 999 F.2d 737, 743 (3d Cir. 1993) (finding probable cause where, *inter alia*, defendant matched a drug courier profile, acted furtively, became nervous when engaged in conversation by detectives, and was carrying a large amount of cash).

In addition, the following facts are undisputed. First, Schwartz encountered Davis on or near the third floor, close in time and location to where Officer Crozier had arranged to meet a prostitute. *See* Tr. at 74:1–2. Second, the hotel clerk suspected that a black male, who

periodically walked around the hotel, was involved in prostitution. Davis fit that physical and behavioral description. Third, as Davis conceded at the hearing, he was counting U.S. currency when he first encountered Schwartz. *See* Tr. at 74:17–20. And fourth, Schwartz knew from his professional training and experience that a “pimp” typically lingers nearby to collect money, intervene if a “john” (prostitution client) becomes violent, and look out for law enforcement. Tr. at 33:8–16. Based on those undisputed facts alone, Schwartz had probable cause to arrest Davis in the stairwell.

(2) **Justification for the Searches and Seizures.** Because Schwartz had probable cause to arrest Davis, the subsequent search of Davis’s person is properly analyzed as a search incident to arrest. After executing a lawful arrest, an officer may conduct a “full search” of an arrestee’s person. *United States v. Robinson*, 414 U.S. 218, 235 (1973). Searches of a person incident to arrest, “while based upon the need to disarm and to discover evidence,” are reasonable regardless of “the probability in a particular arrest situation that weapons or evidence would in fact be found.” *Id.*

The cell phone, Walmart gift card, and room key were validly seized incident to Davis’s arrest. *See* Tr. at 109:18–22. Schwartz had probable cause to believe that each item was an instrumentality of prostitution activities. Specifically, Schwartz knew from his training and experience that the cell phone likely contained evidence that Davis arranged prostitution activities, and Walmart gift cards are sometimes used to pay for ads on www.backpage.com. Tr. at 15:1–17, 18:2–19:7; *see Chruby v. Gillis*, 54 F. App’x 520, 524–25 (3d Cir. 2002) (upholding a search incident to arrest that recovered a car key from an arrestee’s pocket). Furthermore, Schwartz acted appropriately by obtaining a warrant prior to searching the contents of the cell phone, given the important privacy interests associated with cell phone data. *Riley v. California*,

134 S. Ct. 2473, 2486 (2014).² The Court therefore denies the Motion to Suppress on this ground.

C. DELAY IN OBTAINING THE WARRANT FOR THE CELL PHONE

Next, defendant argues that the officers held his cell phone for three days without seeking a warrant, and therefore failed to act with reasonable diligence as required. The Court rejects this argument.

In general, “seizures of personal property are ‘unreasonable within the meaning of the Fourth Amendment . . . unless . . . accomplished pursuant to a judicial warrant.’” *Illinois v. McArthur*, 531 U.S. 326, 330 (2001) (quoting *United States v. Place*, 462 U.S. 696, 701 (1983)). However, an officer may temporarily seize property without a warrant if there is “probable cause to believe that a container holds contraband or evidence of a crime” and “the exigencies of the circumstances demand it or some other recognized exception to the warrant requirement is present.” *Place*, 462 U.S. at 701. The police must obtain a warrant within a reasonable period of time, which the Court evaluates by balancing “the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.” *Id.* at 703.

(1) **Possessory Interest.** On the individual’s side of this balance, the Court must assess defendant’s possessory interest in the cell phone. Defendant argues that cell phones implicate weighty privacy concerns, as recognized by the Supreme Court in the recent decision in *Riley v. California*, 134 S. Ct. 2473 (2014). However, because the police did not search the phone during those three days, “the critical question relates to any *possessory* interest in the seized object, not to *privacy* or *liberty* interests.” *United States v. Burgard*, 675 F.3d 1029, 1033

² For the reasons stated above, the Court discredits the part of Davis’s testimony claiming that Schwartz accessed Davis’s phone data in the stairwell.

(7th Cir. 2012) (emphases added). The privacy interests discussed in *Riley* relate to a search of the phone's contents, not a seizure of the phone while seeking a warrant. *See Riley*, 134 S. Ct. at 2486 (noting that petitioners "sensibl[y] conceded" that "officers could have seized and secured their cell phones to prevent destruction of evidence while seeking a warrant"); *Segura v. United States*, 468 U.S. 796, 806 (1984) ("A seizure affects only the person's possessory interests; a search affects a person's privacy interests."). *Riley* is thus inapposite. *Cf. United States v. Stabile*, 633 F.3d 219, 236 (3d Cir. 2011) (upholding a three-month delay in seeking a warrant to search computer hard drives).

Nonetheless, the Court acknowledges that Davis "had a strong interest in possessing his cell phone." *Burgard*, 675 F.3d at 1034.³ However, for the reasons that follow, the Court concludes that Davis's possessory interest is outweighed by the Government's interests.

(2) Government Interests. Turning to the law-enforcement side of the balance, the Court considers the strength of the Government's basis for the seizure and the police's diligence in attempting to secure a warrant. *Burgard*, 675, F.3d at 1033. In this case, the Government had probable cause to believe that the cell phone contained evidence of criminal activity, not mere reasonable suspicion. *See id.* ("[T]he Fourth Amendment will tolerate greater delays after probable-cause seizures."). Furthermore, the Government argues that the three-day delay coincided with the weekend, which presented logistical complications to obtaining a warrant. Specifically, the Government argues that Schwartz "was aware that local magistrates prefer not to sign non-emergency . . . warrants such as this one on the weekends, the on-call attorneys on

³ Davis testified at the hearing that he twice requested the return of his cell phone. Tr. at 72:11, 73:2–9. In his supplemental memorandum, Davis claims that this testimony is corroborated by the fact that the cell phone was not noted in police records until November 10, 2014. The Court need not address that issue because, as discussed below, the Court concludes that the delay was reasonable even if Davis "asserted his possessory interests over the phone" *Burgard*, 675 F.3d at 1034.

the weekends . . . [typically] cannot approve warrants . . . and he was not authorized for overtime work on such a warrant . . .” Resp. Br. at 10–11. The officers sought a warrant on the first available business day, Monday, November 10, 2014. *See United States v. Martin*, 157 F.3d 46, 54 (2d Cir. 1998) (upholding an eleven-day delay because, *inter alia*, the delay “included two weekends and the Christmas holiday, which could explain the difficulty in promptly obtaining the warrant”).

Balancing these factors, the Court concludes that the three-day delay in obtaining the warrant was reasonable. In *Burgard*, for example, the Court of Appeals for the Seventh Circuit concluded that the officers acted reasonably when they held the defendant’s cell phone for six days before seeking a warrant—even after the defendant “asserted his possessory interests over the phone . . .” 675 F.3d at 1034. The delay in this case was likewise reasonable. The officers “may theoretically have been able to work more quickly,” but “[w]ith the benefit of hindsight, courts ‘can almost always imagine some alternative means by which the objectives of the police might have been accomplished’” *Id.* (quoting *United States v. Sharpe*, 470 U.S. 675, 686–87 (1985)). The Court therefore concludes that the officers acted with appropriate diligence in securing the warrant, and declines to suppress evidence provided by the cell phone by reason of the delay.

D. REDACTIONS TO THE WARRANT AFFIDAVIT

Finally, defendant argues that the affidavit attached to the cell-phone warrant is excessively redacted, making it impossible to dispute the magistrate’s finding of probable cause. In response, the Government submitted a less-redacted version of the warrant and accompanying affidavit. The Court concludes that probable cause to search the cell phone is evident from the

face of the original redacted affidavit. Moreover, that issue was mooted by the provision of the less-redacted affidavit. The Court thus rejects this argument and denies the Motion to Suppress.

III. OMNIBUS DISCOVERY MOTION

Also before the Court is defendant's Omnibus Discovery Motion, which advances four separate motions: (1) Motion for Bill of Particulars; (2) Motion for Preservation and Retention of Rough Notes; (3) Motion for Production of Exculpatory Evidence; and (4) Motion for Early Production of Jencks Act Material. For the reasons that follow, the Omnibus Motion is denied in part and denied as moot in part.

A. MOTION FOR BILL OF PARTICULARS

Defendant seeks a bill of particulars in this case on the ground that "discovery has been so greatly redacted that the indictment . . . has become insufficient to provide notice of what the alleged 'victims' state that Mr. Davis did." Omnibus Mot. at 3. At the hearing on June 8, 2016, defendant modified this motion to seek a bill of particulars only as to Count II of the indictment. Tr. at 85:9–16. For the following reasons, the Court denies the Motion for Bill of Particulars.

The Court may direct the government to file a bill of particulars pursuant to Federal Rule of Criminal Procedure 7(f) where "the indictment itself is too vague and indefinite" to "inform the defendant of the nature of the charges brought against him to adequately prepare his defense, to avoid surprise during the trial and to protect him against a second prosecution for an inadequately described offense." *United States v. Addonizio*, 451 F.2d 49, 64 (3d Cir. 1971). The Court has "very broad" discretion in granting or denying a defendant's motion for a bill of particulars. *Will v. United States*, 389 U.S. 90, 98–99 (1967).

In this case, defendant does not argue that the indictment is too vague or indefinite. Instead, defendant avers that the Government's redacted *discovery* does not provide sufficient

notice. However, “[b]ills of particulars are not to be used as a discovery tool by the defendant.” *United States v. LBS Bank-New York, Inc.*, 757 F. Supp. 496, 507 (E.D. Pa. 1990) (DuBois, J.); accord *United States v. McGill*, No. 12-cr-112-01, 2016 WL 48214, at *8 (E.D. Pa. Jan. 5, 2016) (holding that the bill of particulars is a “pleading tool, not . . . a discovery tool”). It is “firmly established” that defendant “is entitled neither to a wholesale discovery of the government’s evidence, nor to a list of the Government’s prospective witnesses” at this stage of the proceedings. *Addonizio*, 451 F.2d at 64 (internal citations omitted). The Court concludes that the indictment adequately informed defendant of the nature of the charges brought against him to adequately prepare a defense, avoid surprise during trial, and protect against a second prosecution. The Court therefore denies the Motion for Bill of Particulars.

B. MOTION FOR PRESERVATION AND RETENTION OF ROUGH NOTES

Defendant next seeks the preservation and retention of rough notes relating to the investigation taken by law enforcement personnel. See *United States v. Ammar*, 714 F.2d 238, 259 (3d Cir. 1983); *United States v. Vella*, 562 F.2d 275, 276 (3d Cir. 1977) (“[T]he rough interview notes of F.B.I. agents should be kept and produced so that the trial court can determine whether the notes should be made available to the appellant under [*Brady*] or the Jencks Act.”). In its response to defendant’s Motion, the Government stated that it has directed law enforcement personnel (both FBI and Bensalem Police) to preserve any notes relating to the investigation. The Court concludes that is appropriate under the circumstances of this case, and denies this Motion as moot.

C. MOTION FOR PRODUCTION OF EXCULPATORY EVIDENCE & MOTION FOR EARLY PRODUCTION OF JENCKS ACT MATERIAL

Defendant seeks production of exculpatory and impeachment evidence for all Government witnesses—including information about past criminal behavior and misconduct,

information pertaining to the mental health of any Government witness, and disclosure of any monies paid to Government witnesses. *See Giglio v. United States*, 405 U.S. 150 (1972); *Brady v. Maryland*, 373 U.S. 83 (1963). Defendant also seeks disclosure of Jencks Act material two weeks prior to the start of trial. *See* 18 U.S.C. § 3500.

In its response to the Omnibus Motion, the Government stated that it will produce Jencks Act material and any exculpatory/impeachment evidence (*Giglio* material) for Government witnesses two weeks prior to trial. The Court concludes that the Government's proposal is appropriate under applicable law and the circumstances of this case, and denies this Motion as moot.

IV. CONCLUSION

For the foregoing reasons, the Motion to Suppress is denied. The Omnibus Discovery Motion is denied in part and denied as moot in part. Specifically, the Motion for Bill of Particulars is denied. The other discovery motions are denied as moot in view of the Government's agreement to direct law enforcement personnel to preserve any notes relating to the investigation, and the Government's agreement to produce *Jencks* and *Giglio* material two weeks prior to trial.

An appropriate order follows.

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ORDER

AND NOW, this 21st day of June, 2016, upon consideration of Defendant’s Motion to Suppress Evidence (Document No. 52, filed May 27, 2016), Government’s Response in Opposition to Defendant’s Motion to Suppress Evidence (Document No. 54, filed June 3, 2016), Defendant’s Omnibus Discovery Motion (Document No. 53, filed May 27, 2016), Government’s Response in Opposition to Defendant’s Omnibus Discovery Motion (Document No. 55, filed June 3, 2016), a hearing on said motions on June 8, 2016, Supplemental Memorandum in Support of Defendant’s Motion to Suppress Physical Evidence (Document No. 62, filed June 17, 2016), and Government’s Response to Defendant’s Supplemental Memorandum in Support of his Motion to Suppress Physical Evidence (Document No. 65, filed June 20, 2016), for the reasons set forth in the accompanying Memorandum dated June 21, 2016, **IT IS ORDERED** as follows:

1. Defendant’s Motion to Suppress Evidence is **DENIED**.
2. Defendant’s Omnibus Discovery Motion is **DENIED IN PART AND DENIED**

AS MOOT IN PART, as follows:

- a. The Motion for Bill of Particulars is **DENIED**.
- b. The Motion for Preservation and Retention of Rough Notes is **DENIED AS MOOT** in view of the Government’s agreement to direct law enforcement

personnel (both FBI and Bensalem Police) to preserve any notes relating to the investigation.

- c. The Motion for Production of Exculpatory Evidence (*Giglio* material) is **DENIED AS MOOT** in view of the Government's agreement to produce any exculpatory/impeachment information in the Government's possession for each Government witness fourteen (14) days prior to trial.
- d. The Motion for Early Production of Jencks Act Material is **DENIED AS MOOT** in view of the Government's agreement to produce Jencks Act material for each Government witness fourteen (14) days prior to trial.

BY THE COURT:

/s/ Hon. Jan E. DuBois

DuBOIS, JAN E., J.